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16 November 1950

Legal Staff

Social Security Act of 1950

## OGC Has Reviewed

1. This memorandum is in reply to your request concerning the applicability of the Social Security Act Amendments of 1950 (Public Law 734) to certain employees of the Central Intelligence Agency.

2. As you know, under present law all employees of the Federal Government and most employees of Federal instrumentalities are excluded from old-age and survivors insurance (OASI). However, the new law changes this picture, as of 1 January 1951.

3. Generally speaking, the new law extends OASI coverage to the following services performed in the employ of the United States or its instrumentalities, provided the services are not covered by another retirement system established by Federal law, or are not contained in the exclusions from coverage listed subsequently:

a. Services performed by temporary employees of the United States, whether they are awaiting permanent or indefinite appointment or are in positions not intended to be permanent or indefinite.

b. Services performed in the employ of a corporation wholly owned by the United States.

c. Services performed in the employ of a Federal credit union.

d. Services performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service and similar organizations.

The new law covers several other groups which are not mentioned here.

4. The new legislation specifically excludes from coverage certain services performed for the United States, and the following are exclusions most pertinent to our Agency:

a. Services covered by another retirement system established by Federal law (mentioned previously in Paragraph 3). Determinations as to whether the particular service is covered by a retirement system of the requisite character are to be made on the basis of whether such service is covered under a law enacted by Congress which specifically provides for the establishment of such retirement system.

b. Services performed by individuals excluded by Executive Order from the Civil Service Retirement Act because they are paid on a contract or fee basis.

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c. Services performed by individuals to whom the Civil Service Retirement Act does not apply because such individuals are subject to another retirement system.

d. Services performed by individuals paid \$12.00 or less per year.

5. The new law extends coverage for employment in Puerto Rico and the Virgin Islands.

6. Employment outside the United States. Services performed outside the forty-eight states, the District of Columbia, Hawaii, Alaska, Puerto Rico, and the Virgin Islands, by citizens of the United States for an American employer ARE covered by the new law.

7. Aliens. An alien employed outside of the United States is NOT covered by the new law. (The "United States" as used here means the forty-eight states, the District of Columbia, Hawaii, Alaska, Puerto Rico, and the Virgin Islands). However, an alien is treated in the same manner as a citizen provided his services are performed within the United States. The same is true of employment on or in connection with an American vessel or aircraft under a contract of service entered into within the United States, or employment on or in connection with an American vessel or aircraft that touches a port in the United States.

8. Temporary Employees. The legislative intent to cover temporary employees is clear. However, steps are being taken to exempt CIA from the provisions of the so-called Whitten rider and Executive Order 10160, in order to eliminate the problem concerning temporary employees. In other words, CIA should have very few "tempos."

It is probable, from time to time, that a few "tempos" will be employed by the Agency, and in such cases, deductions for OASI must be made. It will also be necessary to include the name and social security account number of such employees on the Form 941 which goes to the Bureau of Internal Revenue and ultimately to the Social Security Administration. Normally this would present somewhat of a security problem, but it is our understanding that such "tempos" will be employed only when there is no security factor involved.

9. Overt Personnel. Overt personnel will be subject to the general principles enumerated in the foregoing paragraphs. The same is true, of course, of covert personnel, but we are going into the latter problem in some detail because of the unusual facts involved.

10. Covert Personnel. The following definitions of certain classes of personnel are taken from the minutes of the Ad Hoc Committee on Categories of Personnel, meetings of 30 October and 7 November 1950. The applicability of the Social Security Act of 1950 to each category is explained after each definition.

a. Staff Employee

Definition: A citizen of the United States appointed, at U. S. Government rates of pay, to an established position in

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CIA which carries with it all rights to annual and sick leave, retirement benefits, and other emoluments of Government employees. For clarification purposes, integrees in non-sensitive areas and employees under nominal Government cover will be included in this category.

**Applicability of Social Security Act of 1950:** The new legislation has no effect upon a Staff Employee, because he is covered by another retirement system established by Federal law.

b. Staff Agent

**Definition:** An employee who meets the standards for a Staff Employee, but performs services under cover and is appointed in pseudonym for security reasons. He is entitled to substantially all the privileges of a Staff Employee and his conversion to a Staff Employee is provided for in his appointment action.

**Applicability of Social Security Act of 1950:** The new legislation has no effect upon a Staff Agent, because he is covered by another retirement system established by Federal law.

c. Career Agent

**Definition:** A person performing operational duties under durable cover who, although not a Staff Employee of CIA, is by virtue of his contract entitled to some or all of the benefits of an employee of the U. S. Government; his contemplated relationship to CIA is of lengthy and indefinite duration and the grade level of his employment is stated in his contract. Unlike a Staff Agent, his subsequent conversion to staff employment is not contemplated or provided for in the initial arrangements.

**Applicability of Social Security Act of 1950:** The new legislation has no effect upon a Career Agent, IF he is covered by a retirement system established by Federal law. It is our understanding that a Career Agent will be so covered.

d. Agent

**Definition:** A person engaged in operational duties who is not entitled to tenure, leave, or other emoluments except as specifically stated in the contract, which may be oral or written.

**Applicability of Social Security Act of 1950:** An Agent is not covered by the new legislation, because he is paid on a contract basis.

e. Consultant

Definition: An individual of special skills, knowledge, or experience whose advice, assistance and guidance are needed and furnished on an intermittent basis - see OPC Regulation 20-5. For clarification purposes, there are two types:

(1) An overt consultant who is appointed in true name on vouchered or unvouchered funds.

(2) A covert consultant who is under contract in pseudonym.

Applicability of Social Security Act of 1950: A consultant is not covered by the new legislation, because he is paid on a contract or fee basis. (This is true of both overt and covert consultants).

f. Detailed Personnel

Definition: Personnel overtly or covertly assigned, attached, or detailed by another Government agency for duty with CIA.

Applicability of Social Security Act of 1950: It is probable that most persons falling in this category will be covered by a retirement system established by Federal law, and consequently will not be affected by the new legislation. In the event that certain detailed personnel are not so covered, it will be necessary to apply the other general provisions of the law to the facts in each case to determine the applicability of the Social Security Act of 1950. The Legal Staff is, of course, always available to assist in such a determination.

g. Miscellaneous

Definition: Non-operational personnel performing service and maintenance functions at a field installation.

Applicability of Social Security Act of 1950: It is our understanding that this category includes only aliens serving outside the United States (used in the wide geographic sense of Paragraph 7), and that such personnel will be paid on a contract or fee basis. Consequently, the new law does not apply to such personnel.

11. Conclusion. The new legislation should have little effect upon CIA, primarily because of the elimination of the problem concerning temporary employees. While it is probable that a few "tempers" will be employed from time to time, it is our understanding that this will be done only when there is no

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security factor involved. Consequently, inclusion of names of such employees on a Form 941 should present no problem. As to the other employees, the Social Security Act contains numerous exceptions which exclude other classes of CIA employees. It is probable that other problems will arise under this new law, and in such event Legal Staff is always available to assist you.

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cc: Subject  
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